IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6557 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ROHITBHAI KRISHNALAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for Petitioner

MR RC KODEKAR, APP for Respondent No. 1

MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/02/2000

ORAL JUDGEMENT

Complainant of Criminal Case No.2188 of 1993 which was pending before the learned Chief Judicial

Magistrate, Bhuj-Kutch had filed a complaint on 23-4-1987 against the present petitioner and others before the Gandhidham Police Station which has been registered as Gandhidham Police Station I.C.R.No.86 of 1987. Police investigated the same and submitted charge-sheet against the present petitioner and one Shri Kantilal R. Maru and same was numbered as Criminal Case No.5973 of 1988 before the learned Judicial Magistrate (First Class) at Gandhidham wherein charge under Secs.406, 416, 419, 423, 424, 465 and 468 of Indian Penal Code was framed against the present petitioner and said Kantilal R. Maru. Thereafter, various witnesses had been examined by the prosecution to prove the guilt of the accused. Thereafter, because of the establishment of the new court, this case was transferred in the court of learned Chief Judicial Magistrate at Bhuj-Kutch and same has been renumbered as Criminal Case No.2188 of 1993.

2. In the above proceedings, present petitioner has submitted applications Exs.217 and 231 requesting the court below to join other persons as accused and according to him, they are the real culprits and against them, departmental enquiry was also held. In the said application, he has also made averments regarding the previous applications Exs.104, 179, 182, 186 and 191 filed by him. According to him, though the above applications have been filed before the court, still court has not accepted his request and not joined them as accused and, therefore, he has no other alternative, but to file applications Exs.217 and 231. After hearing the parties, said applications were rejected by the learned Chief Metropolitan Magistrate vide common order dated 5-7-1999 and present petitioner was directed to pay an amount of Rs.1,000/- towards the cost to the State.

3. Against that order, present petitioner filed Cri. Revision Application No.435 of 1999 before this Court wherein notice was issued. Thereafter, vide order dated 27-10-1999, petitioner was permitted to convert said Cri. Revision Application No.435 of 1999 into a petition under Sec.482 of Code of Criminal Procedure. After conversion, said petition was renumbered as Misc. Cri. Application No.6557 of 1999 and petition was amended and prayer para 6(3) was added to quash and set aside the Criminal Case No.2188 of 1993 pending in the Court of learned Chief Judicial Magistrate, Bhuj-Kutch.

4. I have heard petitioner who is party-in-person at length. I have also heard Mr.R.C.Kodekar, learned APP appearing on behalf of respondent No.1-State and Mr.D.N.Patel, learned counsel appearing on behalf of

respondent No.2-Kandla Free Trade Zone.

5. I have gone through the original record of Criminal Case No.2188 of 1993 which was called for. It reflects from the record and proceedings that petitioner is one of the accused of a complaint filed by the complainant in the year 1987. Said complaint was registered as Criminal Case No.5973 of 1988. In this case, charge-sheet has been filed against the present petitioner and one Mr.Kantilal R. Maru. It further reflects from the said record that learned Judicial Magistrate (First Class), Gandhidham had examined number of witnesses in the year 1989 itself and thereafter, matter could not be proceeded further because of various applications submitted by the present petitioner-accused at various stages in the court. Thereafter, case was transferred to the court of learned Chief Judicial Magistrate at Bhuj-Kutch and said Criminal Case No.5973 of 1988 was renumbered as Criminal Case No.2188 of 1993. Thereafter till the year 2000, complaint of 1987 could not be finally disposed of for the aforementioned reasons.

6. Petitioner has mainly argued that if the complaint is accepted as it is and where it is, then also, no offence is made out against him and, therefore, complaint registered against him is required to be quashed. He has drawn my attention that there are other accused whom charge-sheet has not been filed by the police and when his request for joining them as accused was rejected by the court, he has no other alternative, but to submit various applications at various stages. He has further argued that he has filed complaints against four accused firstly in the year 1992 which has been numbered as Criminal Case No.14 of 1992. Thereafter Criminal Case Nos.60 of 1992 and 8 of 1993 have been filed and in the year 1994, he has also filed one another complaint and all these complaints have been dismissed by the court by taking no cognizance of the same and, therefore, finding no alternative, he has filed one more complaint in the year 1995 and same has been registered as Criminal Case No.22 of 1995 wherein his prayer was accepted and report was submitted by the Investigating Officer in the court and same is pending as Inquiry Case No.22 of 1995 before the learned Chief Judicial Magistrate, Bhuj-Kutch.

7. Whereas Mr.D.N.Patel has vehemently argued that it is nothing but misuse of the process of law by the petitioner which is required to be taken into consideration seriously and some major penalty is

required to be imposed against the present petitioner-accused. He has submitted that because of the act of the petitioner-accused of submitting various types of applications from the very beginning, court could not proceed further till today.

8. I have perused orders passed by the court below upon exs.217 and 231. It is established from the record and proceedings as well as from the arguments of petitioner-accused and orders passed by the court below that present petitioner-accused has submitted various applications for the same reason from time to time. Once an application is filed in the court, court is bound to pass order in that and by this way, petitioner has tried to prolong the matter from very beginning. It is to be noted that charge-sheet has been submitted and charge has been framed against the present petitioner and others in the year 1989 itself and in that year, even oral evidence of various witnesses have been recorded by the court. When the statements which have been recorded by the investigating officer as well as the complaint and other documentary evidence disclose the prima-facie offence against the petitioner and other accused, question of quashing does not arise at this stage particularly when it is a part heard trial. If petitioner has submitted any application which is not decided by the court, then remedies are open to him to prefer appropriate proceedings before the appropriate authority. Instead of doing so, he has tried to repeat his act by preferring repeated applications. It is nothing but misuse of the process which is required to be curtailed at this stage. Keeping in mind all the aspects of the matter, it is a fit case wherein this Misc. Cri. Application is required to be rejected.

9. This Misc.Cri.Application is hereby rejected. Rule is discharged. Since the petitioner-accused has not deposited the cost which has been imposed upon him by the court below while deciding application exs.217 and 231, I direct the petitioner to pay an amount of Rs.2,500/-(Rupees Two Thousand Five Hundred only) towards the cost to the otherside and deposit the same directly with the court below.

10. Office is directed to send the original records of both the proceedings before the concerned court and court below is directed to proceed with the matter on a day-to-day basis so as to dispose of the same latest by the end of May, 2000.

(R.P.DHOLAKIA,J.)

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